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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91210103
Party	Defendant Alberto Soler DBA Coki Loco and Miriam Soler
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re: 85/672,347

Marks: COKI COLA HAPPY MOTION

Filed: July 10, 2012

Published: December 18, 2012

ALBERTO SOLER, DBA **COKI LOCO**

and

MIRIAM SOLER

Applicants,

v.

Opposition: **91210103**

The Coca-Cola Company

Opposer.

\_\_\_\_\_/

**OBJECTION TO OPPOSER'S FALSE STATEMENTS IN RESPONSE TO THE  
MOTION TO DISMISS AND APPLICANT'S REPLY THERETO**

Applicant Alberto Soler, hereinafter Soler, and pursuant to the applicable rules of TTAB, hereby strongly "objects" to Opposer's false statements in their response to the motion to dismiss and replies thereto.

In support thereof, Soler speaks loud as follow;

## **INTENTIONAL DISREGARD FOR THE TRUTH**

1. Opposer (hereinafter TCCC) finds comfort in blaming Soler for a late filing response to Soler's motion to dismiss (hereinafter MTD) filed 04/22/2013. TCCC'S counsel of record is somewhat suggesting to the Board that Soler failed to follow the Board's rules of proper service thus, late filing should be accepted. TCCC'S words of record states the following:

*“As of May 15, 2013, Opposer did not receive notice of nor a copy of the motion by email, nor has Opposer consented to service by email. Opposer only learned of Applicant's motion to consolidate through Opposer's a routine check of the proceedings online”*

TCCC'S excuses for the late filing are false, thus sustaining and compounding further their bad faith in these proceedings.

The true facts are clear here:

In email communications dated as (A) Jan. 28<sup>th</sup>, 2013; (B) Feb. 06<sup>th</sup> and (C) 18<sup>th</sup>, 2013; (D)(E) April 22/22, 2013; (F) April 25<sup>th</sup>, 2013 and (G) May 05<sup>th</sup>, 2013; we will find email messages by Soler forward to TCCC'S counsel of record requesting information, forwarding motions and advising for email consent for service of motions/consolidation.

(A) On Jan/28, Soler requesting information on who will be TCCC'S counsel of record that would be handling a cancellation against mark 0022406 if counter claims are warranted;

(B) On Feb/06, Soler requesting consent for service of papers thru email;

(C) On Feb/18, TCCC'S counsel forwarding Soler a copy of a response motion thru-email service;

(D)(E) On April/22/22, Soler forwarding the present MTD thru email services and the a instant email reply generated by TCCC'S counsel email-system after Soler's email sent, advising;

**"I am traveling internationally on business until April 26. I will  
check email intermittently, and will reply as soon as possible...."**

(F) On April/25<sup>th</sup>, Soler requesting consent for consolidation of both opposition proceedings;

(G) On May/05, Soler forwarding a copy of the consolidation request motion thru email service to both TCCC'S counsel of record.

*(These email messages will not be submitted/release here as attachments due to confidentiality and will only be release if order by the Board)*

Those are the true facts and not what TCCC'S counsel has stated as a responsible and ethical member of the bar and these proceedings.

Was TCCC'S counsel of record moonlighting and arrived back late? Or was counsel never sitting at the desk and waiting at the front entrance for the postman to arrive with the mail or was counsel sitting at the desk but never checking for email messages or did counsel never founded Soler's mail until later when arriving back from the trip and after searching throughout the piles of mail that was stack up or scarred all over or on top of the desk? What about TCCC'S counsel on 02/18 forwarding Soler a motion response via email service and now suggesting never consenting to service via email.

There is evidence on the record that suggests that counsel of record was not responsible to the client since counsel was also late in filing a opposition to a related mark, DKO # 91210647, that will now trigger a dismissal as nullity.

Whatever it was, one thing is obviously here. TCCC'S counsel of record made false statements to the Board and is advocating unethically. *37 CFR 11.301/303/304/804*

Pro se Soler is the one here who is being harassed and unfairly prejudiced by TCCC bad faith tactics and intentional delays of these proceedings and now also with the false and ridiculous allegations that they have not been properly served. Have they forgotten who they are?

The cost will be on them.

Soler consents to TCCC'S late filing response to the MTD.

#### PRIORITY

2. TCCC is correct that pleaded registration would establish priority. However, they failed to plead their original and first mark register on Jan. 31, 1893. 0022406. Why?

No matter the reason which we here have an idea, priority claims is a issue if the pleaded mark(s) are attacked via counter claim for cancellation. *Lexicon Inc., v. Lexicon Music*, 225 USPQ 201 (TTAB 1985)

As we see not here in these proceedings, TCCC intentionally did not pleaded their first mark 0022406 after learning from Soler's email message that a cancellation attack could be foreseeable thus, withheld from pleading the mark so Soler can not counter claim since that mark can be challenge at any time via the Trademark Act of 1881 for never being republished under the Lanham Act. *Henry a La Pensee v. Societe a*

*Responsabilitie*, 243 F.2d 181 (CCPA 1957)

If TCCC'S golden mark can not stand then all the marks that came after that are now pleaded to claim priority, will also fall..

TCCC has never in any TTAB proceeding withheld the pleading of such mark but they do here. They should be told to plead the mark 0022406 for Soler to be able, as everyone else who came before him, given the right to claim they have no priority and are instead a de facto secondary meaning and if not, is deceptive and much worst; both side of the coin-a trade and mark monopoly.

### CONFUSION/DILUTION

3. TCCC suggests that Soler's argument here is w/o merit. TCCC talks but does not walk the talk. Under which authority is TCCC refuting Soler's argument. We find TCCC citing a infringement US Supreme Court case and Soler's own citation of a 4<sup>th</sup> Circuit case which obviously both case has no bearing here. In fact there is no authority from either the TTAB or the Federal Circuit or any court on the question presented by Soler, none. Obviously, it is TCCC'S response that has no merit. Thus, the Board here should have the last word on the matter which should involve observing the stated law from the highest court of the land and even if it was, as TCCC wants us to believe why not, a FDA case.

The time has come and because of righteous Justice Hughes opinion in *USDA v. 40 Barrels/20 Kegs of Coca-Cola*, 241 U.S. 265 (1916)

### FRAUD

4. TCCC continues its unsupported allegations that Soler committed fraud by filing the

application under the wrong owner's name.

TCCC is still lost in the process and does not want others to think otherwise.

TCCC has never nor do they now plead that Soler misrepresentation was to "procure registration". Further, TCCC has never nor do they now plead that Soler intended to "deceive the USPTO" They even admit that Soler statements suggests that the deception is not on the USPTO. They even find comfort by stating that since Soler does not deny any wrong doing, Soler then is admitting fraud. How nice indeed, by not denying means admitting. Do they know where we live and the rules of civil procedures. We are in America and in a civil motion to dismiss stage before the answer. Soler does not need to speak or voice anything at this stage and TCCC needs to plead the facts and stop circumventing the rules to their advantage against a pro se litigant.

Nonetheless, since we are on the topic of fraud and wrong owner's name, TCCC could get what they wish for and it will be by Soler's wishful thinking.

For the record and stated clear since its relevant here: TCCC is the one who has committed fraud upon the USPTO when filing the application for the mark called Doke, application 85672788, and is currently deceiving the USPTO with the specimen/statement of use in the mark DKO # 85286271.

#### LACK OF BONA FIDE INTENT TO USE

5. Soler welcomes this ground as TCCC will soon see why indeed if and when Soler speaks.

#### CONCLUSION

6. WHEREFORE, Soler respectfully requests the Board to take notice of TCCC false

statements and bad faith in these proceedings and sustain Soler's motion to dismiss by ordering TCCC to amend the opposition complaint by pleading the mark 0022406 and acquired distinctive, or be face with dismissal on those grounds.

Filed this day of May 27<sup>th</sup> of through the ESTTA electronic system.

Respectfully submitted,

ALBERTO SOLER,

Applicant/DBA COKI LOCO

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#### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished via first class US mail and email attachment this 27th day of May 2013, to TCCC'S attorney of record:

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ALBERTO SOLER



